Supreme Court of Michigan.

ATTORNEY-GENERAL *v.* RICE.

When nothing appears to the contrary in the legislative journals, it is to be considered that all the constitutional requirements have been complied with in the passage of an act by the general assembly.

The journals of the houses of a legislature are conclusive evidence of their proceedings, which cannot be contradicted by parol testimony.

Courts do not allow parties to stipulate or agree or admit by pleading that a statute was not properly or constitutionally passed by the legislature.

If the constitution has not been complied with in the passage of an act, that fact must be shown by the printed journals or by the certificate of the secretary of state, or by the proper custodian of the legislative proceedings. Such fact cannot rest in parol.

Unless the journals show affirmatively that the constitutional directions were not complied with it must be presumed that they were followed.

Courts are authorized to take judicial knowledge of the legislative journals.

QUO WARRANTO.

Information to determine right of respondent to hold office.

The Attorney-General (*Olds & Robson*, of counsel), for appellant.

Lucius D. Johnson, for respondent.

The opinion of the court was delivered by

MORSE, J.—The attorney-general files an information in this case to determine the right of the respondent to hold the office of supervisor of township of Ironwood in the county of Ontonagon.

The legislature of 1885 (Act No, 23, of the session laws of 1885) organized certain territory in Ontonagon county into a township, to be called Ironwood. At an election held pursuant to the provisions of said act, on the sixth day of July 1885, the respondent was elected supervisor of said township, and duly qualified, and entered upon the duties of his office. No election was held in said township in the spring of 1886, and the respondent claims to hold over under the statute until his successor has been duly elected and qualified, in manner and form as provided by statute. 1 How. St. 685. The organization of this township is attacked on the ground that no bill was legally introduced or enacted as a statute creating the township of Ironwood.

The replication of the attorney general to the plea of the respondent shows that no bill of the organization of the township of Iron-

wood was ever introduced into the legislature, but, before the expiration of the constitutional limit of fifty days in which to introduce bills, Senator Stephenson introduced a skeleton bill, under the title of "a bill to organize the township of Au Train; that said skeleton bill was no bill at all, and simply consisted of the title as above given, endorsed on a blank sheet of paper; that said township of Au Train was to be located in Alger county. After the expiration of said fifty days, and on June 3d 1885, the chairman on senate committee on town and counties reported, as a substitute for the skeleton bill so introduced by Senator Stephenson, a bill to organize the township of Ironwood in the county of Ontonagon, and that on the same day the rules of the senate were suspended, and said bill, as a manuscript bill, was passed by the senate. Subsequently, it passed the house, and was approved by the governor, June 9th 1885. The replication was demurred to by respondent.

The attorney-general contends that the constitution was violated in its spirit, because the title of the bill as introduced did not express the object of the act as passed. Article 4, 20. We cannot extend the provisions of the constitution beyond its express terms in this respect.

If the object of the act as passed is fully expressed in its title, the form of status of such title at its introduction, or during any of the stages of legislation before it becomes a law, is immaterial. To hold otherwise would, in many cases, prevent any alteration or amendment of a bill after its introduction, as, in legislative practice, it frequently becomes necessary to amend the title as introduced in order to conform to changes in the bill. The title to a bill is usually adapted after it has passed the house, and is not an essential part of the bill, although it is of a law. *Larrison* v. *Peoria, A. & D. Rd.*, 77 Ill. 17. The showing of the replication, however, if we can consider the fact therein gathered by parol, and not found in the legislative records, involves the plain violation of the constitution in another respect. No bill was introduced, but a title was handled up to pass as a bill until convenience or some future interest might enable the member introducing it to ingraft upon it any legislation he might desire.

The object of the constitution providing that no new bill shall be introduced after the first fifty days of the session is to "prevent hasty and improvident legislation, and to compel, so far as any previous law can accomplish that result, the careful examination of

proposed laws, or, at least, the affording of opportunity for that purpose." Cooley, Const. Lim. (1st ed.) 139. Another purpose was, no doubt, to give the people of the state, or of any locality in the state, an opportunity to be heard upon proposed legislation affecting their interest. The legislative journals, referring as they do to the titles of all bills introduced, gives some warning to the people of the measures introduced. The right of petition and protest has ever been recognised as one of the established privileges of the people in a free country; and they have a right to notice of proposed legislation and an opportunity to express their assent or dissent. If there was no constitutional inhibition against such practice, bills might be introduced upon the last days of the session, and rushed at once through both houses, without any chance for the people to be heard before their passage, or to rectify the action until another biennial session of the legislature. The title of the bill in question as introduced gave no notice to the inhabitants of the territory embraced within the limits of this township of Ironwood as organized by this act. And if any person suspecting anything of the kind had investigated the matter before the expiration of the fifty days, he would have found nothing but a title which, without any bill attached thereto, would have conveyed to him no intimation of the act as passed. He would also have been justified, under the provisions of the constitution, in believing that the title could not be used for any purpose.

While the questionable practice of so amending bills, after the expiration of the fifty-day limit, as to make the act passed entirely different from and foreign to the bill introduced, in fact a new bill, has obtained to a great extent in our legislative practice, it is to be hoped that the introducing of mere titles without any body, is seldom resorted to. If it can be successfully maintained, the safeguard of the constitution will be completely broken down, and its provisions nullified. But it is contended by the counsel for respondent that the proceedings of the senate, as set forth in its journal, does not show that this was a skeleton bill, as the bills introduced are not printed in such journal, or preserved, and that this fact is ascertained by parol; that the presumption is always in favor of the legality of legislative proceedings, and, where the record does not show the contrary, the proceedings are conclusively presumed to have been in accordance with the constitutional requirements.

The legislative journals show that on the 16th day of Febru-

ary 1885, a bill was introduced "to organize the township of Au Train," which was read a first and second time by its title, and referred to the committee on counties and townships. The first day of the session was January 7th 1885. June 3d 1885, this committee reported, as a substitute for this bill, a bill to organize the township of Ironwood, county of Ontonagon; the substitute was concurred in, the rule suspended, and the same read a third time and passed, yeas 25 and nays 0. Senate Journal, p. 120. It was transmitted to the house on the same day, and there read the first and second time by its title, and referred to the committee on towns and counties. House Journal, 1604. It was reported back to the house by committee, and June 7th 1885, the rules were suspended, the bill read a third time, and passed. It was also given immediate effect. House Journal, 1652–1658. It was approved by the governor, and became a law June 9th 1885.

Every reasonable intendment is to be made in favor of the proceedings of the legislature. It is not to be presumed that they have violated the provisions of the constitution, either purposely or through carelessness or inadvertence. When nothing appears to the contrary in the legislative journals, it is to be considered that all the constitutional requirements have been complied with in the passage of an act. The journal of the senate postively states that a bill was introduced to organize the township of Au Train. If such a bill was introduced, it would be presumed that the bill substituted to organize the township of Ironwood had in view the same general purpose as the first bill, to give to the inhabitants of the territory described a distinct municipal government. And no one would deny the competency of the legislature to amend a bill by enlarging or diminishing the bounds of the territory included in such bill. *Pack* v. *Barton*, 47 Mich. 521; s. c. 11 N. W. Rep. 367.

The question then arises, can it be shown by parol, in contradiction of the legislative journal, that in fact a "skeleton bill, or no bill at all, was introduced?" The constitution provides that "each house shall keep a journal of its proceedings and publish the same, except such parts as may require secrecy." Are these journals kept by the clerks of each house, and read and corrected each day by each body, and duly certified by the proper officers to be correct, to stand as conclusive evidence of their proceedings, or are they liable to be disputed and overthrown by parol testimony, either of individual officers and members, or of strangers who may be inter-

ested in nullifying legislative action? It would seem that there can be but one answer. The legislative record must prevail. Any other ruling would necessarily lead to dangerous and alarming results. "The testimony of an individual could not be received to contradict a statute, and, if not, why receive it to contradict an entry upon the journal?" *State* v. *Moffitt*, 5 Ohio 363; *Miller* v. *State*, 3 Ohio St. 476, 484.

It is claimed by the attorney-general that it is admitted on the pleadings that no bill was ever introduced; but that the title endorsed upon a piece of blank paper was put in. Courts do not allow parties to stipulate or agree, or admit by pleading that a statute was not properly or constitutionally passed by the legislature. If the constitution has not been complied with in the passage of an act, that fact must be shown by the printed journals, or the certificate of the secretary of state, the custodian of legislative proceedings. Such fact cannot rest in parol. *Happel* v. *Brethauer*, 70 Ill. 166; *Miller* v. *State*, 3 Ohio St. 476. And unless the journal shows affirmatively that the constitutional directions were not complied with, it must be presumed that they were followed. *Schuyler Co.* v. *People*, 25 Ill. 181.

Courts are authorized to take judicial knowledge of the legislative journals. The journals in this case show that the bill was read the first and second time in both houses by its title only. The attorney-general contends that this action was in violation of article 4, sect. 19, of the constitution, which provides that "every bill and joint resolution shall be read three times in each house before the passage thereof." It is a sufficient answer to this objection that the same is not set out or raised in the pleadings. We do not care to go outside of the record to hunt for laws in the legislative journal upon the passage of this bill, if any exists.

It appears that the Board of Supervisors of Ontonagon county, since the passage of this act, have undertaken to form two townships, Bessmer and Ironwood, the territory of which townships, so organized by the supervisors, embraces the territory contained in the township of Ironwood, as organized by the legislature. The petition, however, upon which the supervisors acted in organizing such townships, was signed by persons representing themselves citizens and freeholders of the townships of Carp Lake and Ontonagon. Such action cannot stand in the way of the legislative organization. No

freeholders of the township of Ironwood joined in the petition, as shown upon its face. How. St. sect. 486.

Judgment must be rendered in favor of the respondent, sustaining his demurrer, and declaring him entitled to the office.

The other justices concurred.

The courts are far from unanimity on the subject of investigation to see if an act of the legislature has been passed by that body in accordance with all of the requirements of the constitution. The main line of division is drawn at the point where a bill duly filed in the office provided by law for its custody is signed by the presiding officers of both houses and by the chief executive of the state. In some courts inquiry beyond this point is not permitted ; in others it is.

If we will turn to the English cases on this subject we will receive some aid. The leading case is *Rex* v. *Arundel*, Hobart 110. It appeared that a bill had passed the House of Lords and been sent to the Lower House, and thence returned with a certain proviso annexed to it. The bill was filed with the rest of the bills, and was marked with the royal assent. As it was a private bill it was not enrolled in the Court of Chancery, as was the usage with acts of a public nature. The attempt was made in the Court of Chancery to show by the journal of the House of Lords that the proviso, which was omitted in the copy filed, had passed as a part of the bill. The court resolved that the journal could not be used as evidence for that purpose ; and drew a distinction between an infirmity appearing in the act itself, as where it purported to have been passed without the concurrence of the Commons, and a defect revealed by the journal ; the former being regarded as an incurable imperfection ; the latter as an objection impossible, according to the laws of evidence, to be proven.

So when a defendant, before Lord HALE, pleaded that a bill had never received the royal assent, he was not permitted to raise the question, HALE holding that the certificate of the bill from the Court of Chancery, where it had been recorded, was conclusive. *College of Physicians and Cooper* v. *Hubert*, 3 Keb. 587.

This doctrine has received the sanction of Lord COKE : 12 Rep. 58 ; see *Rex* v. *Jeffries*, 1 Str. 446 ; *Rex* v. *Robotham*, 3 Burr. 1472. "It is believed that the English cases are, without exception, to the same effect—that the roll, called here the enrolled act, imports absolute verity, and therefore cannot be questioned." *Evans* v. *Browne*, 30 Ind. 514.

In several states no inquiry beyond the enrolled act, properly signed by the presiding officers of both houses and the governor, as found on file in the secretary of state's office, is allowed. The production of such a document is conclusive evidence that the act was passed by the legislature. This ruling is placed upon at least two distinct grounds. The first is that the legislature has adopted a mode of certifying its own acts in an authentic form ; and when certified in that form it is conclusive evidence of the passage of the act. In a case where the bill had appended to it the signature of the presiding officers of each house, it was said : "In its present form it was exhibited to the governor as the bill which had been enacted, and as such received his approval, as is evidenced by his signature. It was then immediately made public by being filed in the office of the secretary of state. These are the sanctions which the legislature has provided for the authentication of their own acts, both to the public and to the judicial tribunals—and the question is therefore presented whether such authentication must not be deemed conclu-

sive, or, in other words, whether the legislature does not possess the right of declaring what shall be the supreme evidence of the authenticity of its own statutes? The question, in my opinion, must be answered in the affirmative. How can it be otherwise? The body that possess a law must of necessity promulgate it in some form. In point of fact the legislative power over the certification of its own laws is, of necessity, almost unlimited, as will appear from the circumstance that with regard to the body of an act there is no evidence of any kind but that which the legislature itself furnishes in the copy deposited in the state archives. The journals do not purport to contain more than the amendments, so that the legislative control is absolute with regard to the essential parts of most of the laws which are enacted. We are also to reflect that it is the power which passes the law which can best determine what the law is which itself has created. The legislature in this case has certified to this court, by the hands of its two principal officers, that the act now before us is the identical statute which they approved, and in my opinion it is not competent for this court to institute an inquiry into the truth of the fact thus solemnly attested." *State* v. *Young*, 33 N. J. 192; s. c. 5 Amer. L. Reg. 679.

In *Evans* v. *Browne*, 30 Ind. 514, it was said: "Can it be tolerated that a court must be informed what the law is by the verdict of a jury, as it would be in criminal cases? that in one case it shall be compelled, by the finding of an issue, to determine that the legislature has enacted thus and so, and in the very next case to be tried, where the same issue is not made by the pleadings, or the same evidence has not been produced, or another jury has found differently, the very same court must determine that there is no such statute? It is a maxim old as the common law, and a rule of necessity, that the court takes judicial notice of public law; it is presumed to know what it is, and it is its duty to know it. Even the private citizen must know it at his peril; and his responsibilities and duties are based upon the conclusive presumption that he has this knowledge. Must the court employ the machinery of a trial to give information to the judge, which, as a citizen, he must, at the risk, possibly, of his liberty or life, have possessed before he was called to the bench? It is a most mischievous departure from plain and wise maxims, derived from that system of laws which forms the basis of, and constitutes largely the body of, ours; and, while it would have disturbed the harmony and order of judicial administration in England, it would in this state, in view of the provisions of our constitution, which contains specific directions for the mode of authenticating statutes by high legislative officers, acting under solemn oath, and requires a journal of legislative proceedings to be kept and published, be entirely destitute of any conceivable utility. The enrolled acts, with their authentication, are deposited in a public office, and are there accessible to everybody. The journals are public documents, at least, if not records; and are also within reach of all. Whatever, affecting the question of a quorum, such as the resignation of members, may have been lodged with the governor, may also be inspected. In short, every fact upon which, in any view, depends the question whether a document purporting to be a statute has, by legislative action, been invested with the force of law, is, in its nature, a public fact which may be easily ascertained; it is a fact of public current history, and there is therefore no necessity for bringing it to judicial knowledge by finding of an issue. It may be true, that, ordinarily, the courts would not, unless the matter was questioned, make any investigations beyond the statute-book itself; but this argument is not forcible; for the industry and research of counsel can as

well put the court upon inquiry by an argument and a reference to the sources of information, as by pleading upon the record. To us it seems an astonishing fact in the history of jurisprudence, that there should be, in this country especially, have ever existed a conflict of decisions upon the subject, or that it should have been seriously presented as a question for judicial determination."

In the case last quoted from it is said farther along in it: "The constitution provides that a majority of all the members elected to each house shall be necessary to pass every bill, and that all bills so passed shall be signed by the presiding officers of the respective houses." The veto on the passage of a bill cannot of course, be lawfully taken in the absence of a quorum. What, then, was the purpose in requiring this attestation by the presiding officers? Was it intended as an idle form? It is not fair so to assume. What possible object, then, was sought to be accomplished by it, unless it was to furnish evidence that the paper thus attested had been by the proper processes of each house clothed with the force of law—evidence upon the enrolled act itself which should be taken as authenticated and prove itself upon inspection? The act, the validity of which is here controverted, is thus attested by sworn officers, in the form required by the constitution. It is important, certainly, that the question, whether the enactment of a statute is valid, shall be made capable of ready and correct solution, and that the evidenee thercof shall be preserved, and that it shall not depend upon doubtful or conflicting evidence. When all are bound to know the law, they should have the means of knowledge, and not merely reasons for conjecture, uncertainty and doubt. It has been conceded in the argument for the appellant, that the attestation in this case is *prima facie* sufficient to show a statute regularly and properly enacted, but contended that this only is the force of the authentication required by the constitution. The houses must keep journals of their proceedings, which, however, are not, like the enrolment, required to be either attested or preserved; and it is argued that there is an appeal to these, from the official attestation of the presiding officers, and to the archives in the executive department. Would the journals be as satisfactory to the mind? Such journals, it is notorious, are, and must be, made in haste, in the confusion of business, and are often inaccurate. Their reading is frequently omitted from day to day, so that those errors go without correction. They do not show the nature of the bill as introduced, but merely the amendments which have been proposed to it. They are not required to contain anything by which it could be even identified and its passage traced. They are not required to show whether or not a quorum is present. Journals such as these had been kept by the legislature of the state from the beginning. The convention which framed the present constitution must be supposed to have had knowledge of these things. Can the opinion be entertained that they meant that the journals, necessarily imperfect and incomplete memorials, should, as evidence, override the solemn attestation of the passage of a bill, which they were so careful to require, by the presiding officers? Or can it be supposed that they meant that two records should be looked to as concurrent proofs of the same fact, and yet made no provision for guidance when these should happen to be in conflict? By what reason or analogy can we sustain ourselves in holding that the journal should override the signature upon the enrolled act? Surely not because it is, in the nature of things, more likely to speak the whole truth upon the question in hand. Surely not because it is a rule that the truth of any other record in the world, attested as the law requires to make it proof, may be successfully combatted by something

else, not made by law superior to the attestation of the proper officer. * * * But it is argued, that if the authenticated roll is conclusive upon the courts, then less than a quorum of each house may, by the aid of corrupt presiding officers, impose laws upon the state in defiance of the inhibition of the constitution. It must be admitted that the consequence stated would be possible. Public authority and political power must, of necessity, be confided to officers, who, being human, may violate the trust reposed in them. This perhaps cannot be avoided absolutely. But it applies also to all human agencies. It is not fit that the judiciary should claim for itself a purity beyond others; nor has it been able at all times with truth to say that its high places have not been disgraced. The framers of our government have not constituted it with faculties to supervise coordinate departments and correct or prevent abuses of their authority. It cannot authenticate a statute; that power does not belong to it; nor can it keep the legislative journal. It ascertains the statute law by looking at its authentication, and then its function is merely to expound and administer it. It cannot, we think, look beyond that authentication, because of the constitution itself. If it may, then for the same reason it may go beyond the journal, when that is impeached; and so the validity of legislation may be made to depend upon the memory of witnesses, and no man can, in fact, know the law, which he is bound to obey. Such consequences would be a large price to pay for immunity from the public abuse of authority by the high officers who are, as we think, charged with the duty of certifying to the public the fact that a statute has been enacted by competent power. Human governments must repose confidence in officers. It may be abused, and there may be no remedy.

Nor is there any great force in the argument which seems to be regarded as of weight by some American courts, that some important provisions of the constitution would be a dead letter if inquiry may not be made by the courts beyond the rolls. This argument overlooks the fact that legislators are sworn to support the constitution, or else it assumes that they will wilfully violate that oath. It is neither modest nor just for judges thus to impeach the integrity of another department of government, and to claim that the judiciary only will be faithful to its obligation."

It will be observed that the quotation just made touches upon the weakness of the evidence with which it is sought to overthow the presumption raised by the enrolled act. This is the second ground upon which courts refuse to look to those journals to see if it was constitutionally passed. These journals are often kept in a very careless manner. They are not authenticated by the presiding officer of either house, nor usually by any one. Often they are not read to either house for its approval, but the reading is dispensed with. They "do not always contain amendments not objected to, and which the clerk deems of little importance, and that in the ordinary course they are frequently not even submitted for approval to the body whose acts they purport to record. Evidence which would seem less reliable it is hardly possible to present to the legal mind; it has not one of the guarantees, which, even in the most ordinary transactions, are required to raise a presumption in favor of testimony. Can any one deny that if the laws of the state are to be tested by a comparison with these journals—so imperfect—soauthenticated—that the stability of all written laws will be shaken to its very foundation? Certainly no person can venture to say that many of our statutes, perhaps some of the oldest and most important, those which affect large classes of persons, or on which great interests depend, will not be found defective, even in constitutional particulars, if judged by this criterion. The mis-

placing of a name on a nicely-balanced vote might obviously invalidate any act; what assurance is there, therefore, that a critical examination of those loosely-kept registers will reveal many fatal errors of this description? In addition to these considerations, in judging of consequences, we are to remember the danger, under the prevalence of such a doctrine, to be apprehended from the intentional corruption of evidence of this character. It it surely too much to say that the legal existence of almost every legislative act would be at the mercy of all persons having access to those journals, for it is obvious any law can be invalidated by the interpretation of a few lines, or the obliteration of one name and the substitution of another in its stead. I cannot consent to expose the state legislation to the hazards of such probable error or facile fraud. The doctrine contended for on the part of the defence has no foundation, in my estimation, in any considerations of public policy." *State* v. *Young*, *supra*.

A number of cases support these questions, in principle, and that the courts cannot look beyond the enrolled act when authenticated according to law and filed in the proper office. *Pacific Rd.* v. *The Governor*, 23 Mo. 353; s. c. 66 Am. Dec. 673; *Clare* v. *State*, 5 Iowa 509; *Duncombe* v. *Prindle*, 12 Id. 2; *Green* v. *Weller*, 32 Miss. 651; *Fouke* v. *Fleming*, 13 Md. 392; *People* v. *Devlin*, 33 N. Y. 269; *Pangborn* v. *Young*, 33 N. J. L. 29; *Van Dorn* v. *Bodley*, 38 Ind. 402, 422; *Bender* v. *State*, 53 Id. 254; *Turbeville* v. *State*, 42 Id. 490; *Edger* v. *Board, &c.*, 70 Id. 331; *Board, &c.*, v. *Burford*, 93 Id. 383; *Mayor* v. *Harwood*, 32 Md. 471; s. c. 3 Am. Rep. 161; *Louisiana State Lottery* v. *Richoux*, 23 La. Ann. 743; s. c. 8 Am. Rep. 602; *Speer* v. *Plank Road Co.*, 22 Penn. St. 376; *Eld* v. *Gorham*, 20 Conn. 8; *Sherman* v. *Story*, 30 Cal. 253; *Swann* v. *Buck*, 40 Miss. 268; *Warner* v. *Beers*, 23 Wend. 125. See *Bound* v. *Wisconsin Central Rd.*, 45 Wis. 543; *State* v. *Swift*, 10 Nev. 176; s. c. 21 Am. Rep. 721; *State* v. *Ryan*, 10 Nev. 250; *Brodnax* v. *Groom*, 64 N. C. 244.

The rule of these decisions has been applied even to an amendment to a state constitution. *Green* v. *Weller*, 32 Miss. 651; but in Indiana it would seem that it is not applicable in such a case. *State* v. *Swift*, 69 Ind. 505; *State* v. *McBride*, 4 Mo. 303; *Koehler* v. *Hill*, 60 Iowa 543.

Nor is evidence admissible to prove a mistake of an engrossing clerk. *Mayor* v. *Harwood*, 32 Md. 471; s. c. 3 Am. Rep. 161.

It cannot be shown that even a private act was not passed. *Brodnax* v. *Groom*, 64 N. C. 244.

On the other hand there are many decisions which hold that the question of the passage of an act by the legislature may be raised by the pleadings, and the courts will then examine the journals, at least, to see if the act drawn in question legally passed.

"The principal argument in favor of this judicial appeal from the enrolled law to the legislative journal, and which was much pressed in the discussion at the bar, was that the existence of this power was necessary to keep the legislature from overstepping the bounds of the constitution. The course of reasoning urged was, that if the court cannot look at the facts and examine the legislative action, that department of government can at will set at defiance, in the enactment of statutes, the restraints of the organic law." *State* v. *Young*, *supra*.

In another case it was said: "The journals of each house were evidently intended to furnish the public and the courts with the means of ascertaining what was actually done in each branch of the legislature. They are to be treated as authentic records of the proceedings, and the court may resort to them when the validity of an act is questioned upon the ground of failure of the legislature

to observe a matter of substance in its passage, for the purpose of ascertaining whether the constitutional provisions have been substantially complied with or not. The certificate of the presiding officers is merely *prima facie* evidence that an act has been duly passed, and will be overthrown if it appears from the journals that it was not." *State* v. *McLelland*, 18 Neb. 236; s. c. 53 Amer. Rep. 814.

The case last cited refers to *Gardner* v. *Collector*, 6 Wall. 499. That was a case where the President approved an act without affixing the year of its approval. It was held competent to show this by parol. It was there said: "We are of opinion therefore on principle, as well as on authority, that whenever a question arises in a court of law of the existence of a statute or of the time when a statute took effect, or of the precise terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question, always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule." But it seems to us that this case is not in point; clearly it is not; nor does it lend support to the question whether the enrolled act is conclusive evidence of its passage.

In a Maryland case it was said: "While the presumption arising from the proper forms of authentication of a statute is very strong, that the statute was regularly and constitutionally enacted by the legislature, the authorities maintain that such presumption may be overcome by competent evidence, and the statute may be shown to have never been constitutionally enacted. And this court has so decided at the present term in the case of *Berry* v. *Baltimore & Drum Point Rd.*, 41 Md 446; s. c. 20 Am. Rep. 69. A valid statute can only be passed in the manner prescribed by the constitution, and where the provisions of that instrument in regard to the manner of enacting laws are wholly disregarded in respect to a particular act, it would seem to be a necessary conclusion that the act, though having the forms of authenticity, must be declared to be a nullity, otherwise the express mandatory provisions of the constitution would be of no avail or force whatever." *Legg* v. *Mayor, &c.*, 42 Md. 220.

Supporting the principle of these last citations there are many cases; even so does a standard text book, Cooley on Const. Lim. p. 135; *Osburn* v. *Staley*, 5 W. Va. 85; s. c. 13 Am. Rep. 640; *People* v. *Mahaney*, 13 Mich. 481; *Spangler* v. *Jacoby*, 14 Ill. 297; *Turley* v. *Logan, Co.*, 17 Id. 151; *Prescott* v. *Canal Trustees*, 19 Id. 324; *Supervisors of Schuyler Co.* v. *People*, 25 Id. 181; *People* v. *Starne*, 35 Id. 121; *Ryan* v. *Lynch*, 68 Id. 160; *Miller* v. *Goodwin*, s. c. 7 Chicago Leg. News 294; *Ottawa* v. *Perkins* (following the Illinois decisions because passing upon an Illinois statute), 94 U. S. 260; *Town of Walnut* v. *Wade* (for the same reason), 103 U. S. 683; *Larrison* v. *Rd.*, 77 Ill. 11; *Town of Ohio* v. *Frank* (for the same reason), 103 U. S. 697; *State* v. *Platt*, 2 S. C. 150; s. c. 16 Amer. Rep. 647; *Opinion of the Judges*, 35 N. H. 579; *Purdy* v. *People*, 2 Hill 33; s. c. 4 Id. 384; *De Bow* v. *People*, 1 Denio 11; *Southwick Bank* v. *Com.*, 26 Penn. St. 446; *Fowler* v. *Pierce*, 2 Cal. 165; *Opinion of the Judges*, 52 N. H. 622; *Skinner* v. *Deming*, 2 Ind. 558; *Coleman* v. *Dobbins*, 8 Id. 156; *Moody* v. *State*, 48 Ala. 115; s. c. 17 Am. Rep. 28; *State* v. *McLelland*, 18 Neb. 236; s. c. 53 Am. Rep. 814; *People* v. *De Wolf*, 62 Ill. 253; *State* v. *Hastings*, 24 Minn. 78; *Opin. of Justices*, 45 N. H. 607; *Jones* v. *Hutchinson*, 43 Ala. 721; *People* v. *Conmmel*, 54 N. Y. 276; *State* v. *Francis*, 26 Kan. 724; *Ex parte Vanderberg*, 28 Id. 243; *Com.* v. *Jackson*, 5 Bush 680; *Brown* v. *Nash*, 1 Wy. Tr. 85; *Walker* v. *State*, 12 S. C. 200; *Smithee* v. *Garth*, 33 Ark.

17; *Worthen* v. *Badgett*, 32 Id. 496; *Ryan* v. *Lynch*, 48 Ill. 160; *English* v. *Oliver*, 28 Ark. 317; *Division of Howard County*, 15 Kan. 194; *Brady* v. *West*, 50 Miss. 68; *People* v. *Lowenthal*, 93 Ill. 191; *Perry* v. *Selma*, 58 Ala. 546: *People* v. *Hurlbut*, 24 Mich. 53; *Dew* v. *Cunningham*, 28 Ala. 466; *Corning* v. *Greene*, 23 Barb. 33; *People* v. *Petrea*, 92 N. Y. 128, following the early decisions; *State* v. *Gould*, 31 Minn. 189; *Fordyce* v. *Godman*, 20 Ohio St. 1.

To test the question an issue must be raised touching the passage by the pleadings: *People* v. *Chenango*, 8 N. Y. 317; *Rd.* v. *Wren*, 43 Ill. 79; *Grob* v. *Cushman*, 45 Ill. 124.

And all the cases agree that the courts "cannot inquire into the motive by which the law was produced:" *Fletcher* v. *Peck*, 6 Cranch 131; *People* v. *Devlin*, 33 N. Y. 268. As that the act was passed by means of bribery: *Lusher* v. *Scites*, 4 W. Va. 11; *Wright* v. *Defrees*, 8 Ind. 298; *State* v. *Fagan*, 22 La. Ann. 545; *Jersey City, &c.*, *Rd.* v. *Jersey City, &c.*, *Rd.*, 20 N. J. Eq. 61; *Lynn* v. *Polk*, 8 Lea 121; *People* v. *Petrea*, 92 N. Y. 128; *McCullough* v. *State*, 11 Ind. 424; *Sunbury, &c.*, *Rd.* v. *Cooper*, 7 Am. L. Reg. (O. S.) 158. Nor can either party to a suit admit that an act is invalid, and thereby bind the courts in its determination; *Happel* v. *Brethauer*, 70 Ill. 166; s. c. 22 Am. Rep. 70.

Whether or not an act passed a state legislature, the federal courts will follow the decisions of the courts of that state: *Amoskeag Nat. Bank* v. *Town of Ottawa*, 105 U. S. 667.

Whether or not a law passed is always a question for the court and not for a jury: *Amoskeag Nat. Bank* v. *Ottawa*, *supra*.

All the cases admit that the enrolled act is *prima facie* evidence of the legality of the passage of the bill, in fact that it is very strong evidence of it; and they nearly all admit that courts will take judicial knowledge of the journals of the two houses.

In no case, it is believed, has evidence beyond the journal entries been admitted. Those entries cannot be contradicted. They are conclusive proofs of the facts recited: 52 N. H. 622; *McCulloch* v. *State*, 11 Ind. 424; *State* v. *Moffitt*, 5 Ohio 358; *Ryan* v. *Lynch*, 68 Ill. 160; *Happel* v. *Brethauer*, 70 Ill. 166. The manuscript journals will prevail over the printed copy if there be a difference between them: *County of Santa Clara* v. *Southern Pac. Ry.*, 18 Fed. Rep. 285; *Chicot County* v. *Davies*, 40 Ark. 200. If corrected during a special session of the legislature that caused it to be made, the corrections will be followed: *Turley* v. *County of Logan*, 17 Ill. 151.

It has been held that a failure of the journal to show a compliance of the constitutional provisions will not render the act void: *State* v. *Mead*, 71 Mo. 266; *Williams* v. *State*, 6 Lea 549; *Ex parte Vanderberg*, 28 Kan. 243; *Chicot County* v. *Davies*, 40 Ark. 200; *Worthen* v. *Badgett*, 33 Id. 496; *Walker* v. *Griffith*, 60 Ala. 361; *Harrison* v. *Gordy*, 57 Ala. 49; unless the constitution requires it, it has been held in some cases, the facts touching the passage of an act to be set forth: *Spangler* v. *Jacoby*, 14 Ill. 297.

It has been held that unless the journals show affirmatively that an act did not pass, it will be conclusively presumed that the enrolled act is a law: *Ex parte Vanderberg*, 28 Kan. 243; see *Walker* v. *Griffith*, 60 Ala. 361.

It will be seen by the authorities that the greater number of courts will examine the journals to see if an act has passed with the requisite vote. But it is believed that these cases do not rest upon a solid basis. The doctrine probably had its origin in *Purdy* v. *People*, 4 Hill 384, "a case," of which it has been said, "from the report of which it is almost impossible to tell what was held by the majority to be law upon any subject, but in which the actual judgment of reversal in favor of the plaintiff in

error (who disputed the validity of the passage of an act, and yet did not raise the question by pleading) precludes the possibility of such a ruling." "Finally, in *The People* v. *The Supervisors, &c.*, 4 Seld. 317, without giving any reason or citing any authority to sustain it [the court], did distinctly lay down the doctrine, in a case where it was certainly entirely unnecessary to have considered the question at all:" *Evans* v. *Browne*, 30 Ind. 514.

Why the solemn attestation of three officers—the chosen officers of the two houses, and the governor, who all report to the general assembly in open session that they have signed a certain bill, and that it is a law, thereby giving the assembly the opportunity to enter a protest against the bill becoming a law, or to repeal it—should be overcome by a mere journal entry of a negligent clerk, it is difficult to see. To say that the provisions of a constitution require the journal to show the yeas and nays, or that a certain thing was done with respect to the passage of a bill,—that these must appear affirmatively on that journal to render a bill valid is to put something into the constitution that is not there; and to cast an imputation of dishonesty or carelessness upon two other great and co-equal departments of the government is unworthy of the judiciary. It is simply another illustration of that grasping greed of power in the courts everywhere so dangerously and alarmingly visible, and which cannot be too soon guarded against. To our minds the reasoning in *Evans* v. *Browne*, and *State* v. *Young*, is conclusive.

W. W. THORNTON.

Crawfordsville, Ind.

Court of Appeals of Kentucky.

McCRACKEN COUNTY v. MERCANTILE TRUST CO., ET. AL.

Where a cause of action is barred by the Statute of Limitations in force at the time the right to sue arose, and until the time of limitation expired, the right to rely upon the statute as a defence is a vested right that cannot be divested by a subsequent act of the legislature extending the period of limitation.

APPEAL from McCracken Common Pleas Court.

L. D. Husbands, for appellant, McCracken County.

W. G. Bullitt, for appellees, Mercantile Trust Co., and another.

HOLT, J.—The appellee, Marcella Laurie, was the owner, in 1873 and 1874, of a lot of land in McCracken county, which was assessed for taxation for those years for county purposes. The taxes remaining unpaid, the county collector, on December 17th 1874, sold the property to satisfy the amount owing for 1873; and on March 8th 1875, he again sold it for the taxes of 1874; the county in each instance becoming the purchaser at the price of the taxes due upon it. Subsequently the Mercantile Trust Company purchased the property. On the 18th of February 1884, the legislature passed an act, the first section of which provides "that in all cases where